Testimony of
Kim McClain

Before the Judiciary Committee
Monday, March 25, 2013
10:00 a.m.

H.B. 1145 AN ACT CONCERNING REVISIONS TO THE COMMON INTEREST OWNERSHIP ACT AND THE CONDOMINIUM ACT

Summary

H.B. 1145 proposes to create unnecessary redundancy within CIOA. However, the provision which calls for association board members to not be held criminally liable for any acts performed on behalf of the association provided they acted within the scope of their authority offers a very positive change to the existing law. We support this one provision in the bill.

Kim McClain

I currently serve as the Executive of the Connecticut Chapter of the Community Associations Institute (CAI-CT). CAI-CT is the educational and resource entity for community associations and their service providers in Connecticut. We are one of 60 chapters of a National organization. Through this alliance we are able to provide up-to-the-minute information on the issues and trends affecting associations, programs to enable community association managers to obtain professional credentials and access to hundreds of publications which provide tools to assist association members in their operations.

I am submitting comments, to present my insights into how the proposed bill will affect the more than 5,000 common interest communities in Connecticut, and the hundreds of thousands of people who live in them.

Statement

It is our contention that the key components of this bill are already covered in CIOA.

Community Associations are legal entities which are run democratically. Therefore, it is incumbent upon the unit owners in an association to elect persons who represent their interests. Conversely, unit owners also have the power to remove elected board members who are not performing up to the standards the community desires.

To the extent that problems arise within community associations, CAI believes they can be best addressed through comprehensive board member education, pre-sale disclosure requirements, and professional credentialing of managers. Our common interest communities need more owners to be aware of their responsibilities to themselves and their communities.

1 - Board Members Ensuring Compliance by Managers - It would be unreasonable to require a Board of Directors to "ensure" compliance by their property manager. By virtue of their contracts, managers are obligated to comply with the law and bylaws. This was further enhanced by the 2012 passage of a law requiring community associations managers to be licensed. As an agent of the association, the manager is only empowered to act in accordance with the directives of the Board. It is the Board's responsibility delegate duties, but not responsibility. Thus, managers are responsible for complying with the applicable statutes and association documents.

2 - Five Days Notice Required for All Board Meetings - Given that the vast majority of associations function well and without controversy, this requirement is yet another unnecessary burden. In order to save time and money, man associations employ the current exception in CIOA which allows associations to publish a schedule of Board meetings annually instead of mailing a notice five days before a Board meeting to all owners. Much like local government boards and commissions, everyone knows that the Board meets the second Monday of every month or whatever the case may be. Increasing the administrative work and expense for associations when the current statute calls for adequate notice provisions is simply not practical.

3 - Mandatory Proxies and Deleting Proxy Holder's Name from Ballot - Connecticut law does not provide for a mandatory proxy form. The requirements are simple: the unit owner must identify himself/herself; identify the person being appointed to vote on behalf of the owner; the proxy must be dated; and the proxy must be signed by the unit owner (electronic signatures valid).

There are a variety of proxies, however, which may or may not be applicable to a specific meeting. Current law allows directed proxies, undirected proxies, and partially directed proxies. Associations do not know what type of proxy an owner wishes to use nor should associations be making that decision for them. Though some associations do issue proxies with the meeting notice, their use is voluntary. Making it mandatory will increase the cost and administrative time without any guarantee that the form provided by the Association will be of use to the owners.

It is unreasonable to require that a ballot shall not include the name of the proxy holder if there is reason to do so. For example, some associations have percentage ownership that gives percentage voting rights. In these cases, it is necessary to distinguish votes by different unit owners.

4- Reserve Records - CIOA already requires associations to keep "detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate account records." It is not necessary to specifically require records relating to reserve accounts.

5 – Master Insurance Policy – The elimination of the requirement that a master insurance policy maintained by an association provide primary coverage in the event of damage or destruction to portions of the community already exists under CIOA. Associations are required to maintain property insurance covering the common elements, and typically the units as well.

6 – Elimination of Criminal Liability for Community Association Board Members – CAI-CT supports the adoption of the portion of HB1145 which provides that officers and directors of the association shall not be criminally liable for any conduct performed on behalf of the association, provided they have acted within their scope of authority.

As previously mentioned, association board members are unpaid volunteers serving the community. They have many tasks for which they have great responsibility. Presuming that board members typically act in good faith for the benefit of their community, it is unreasonable to potentially hold them criminally liable for acts that were intended to serve the greater good of the community. It is challenging enough as it is to find willing volunteers to assume the responsibilities of governing their neighbors. Supporting this one provision of HB 1145, would also help to support the tireless volunteers who oversee the operations of the common interest communities in our state.

Conclusion

The majority of community associations in Connecticut are small – under 50 units – and are typically self-managed, e.g. without the assistance of a professional manager. Strategies for how these associations would be made to understand and then implement the requirements of this bill are not considered. It is difficult enough as it is to serve as a volunteer for the community. This bill would make this uncompensated job even more onerous.

We would be happy to further discuss with you this issue, or any others affecting common interest communities in Connecticut. Please do not hesitate to contact us with any questions or concerns. I can be reached at 860-633-5692 or email: caictkmcclain@sbcglobal.net.

Thank you for your consideration.

Respectfully submitted,

Kim McClain